NO. 498
NO. 573 (Consolidated)

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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

MARTIN DANZIGER, ACTING CHAIRMAN; DON THOMAS, COMMISSIONER; MADELINE McWHINNEY, COMMISSIONER; CARL ZEITZ, COMMISSIONER, CONSTITUTING THE CASINO CONTROL COMMISSION, STATE OF NEW JERSEY; G. MICHAEL BROWN, DIRECTOR DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, STATE OF NEW JERSEY; DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, STATE OF NEW JERSEY and THOMAS KEAN, GOVERNOR, STATE OF NEW JERSEY,

Appellants,

v.

HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 54 and FRANK GERACE, PRESIDENT HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 54,

Appellees.

On Appeal from the United States Court of Appeals for the Third Circuit

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JOINT APPENDIX

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Appeal Docketed in No. 498 on September 23, 1983.
Appeal Docketed in No. 573 on September 26, 1983.
Probable Jurisdiction noted on November 28, 1983.

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APPENDIX A

Chronological List of Relevant Docket Entries

August 17, 1981—Complaint and motion for preliminary injunction of Plaintiffs, Hotel and Restaurant Employees and Bartenders International Union Local 54 and Frank Gerace, President, filed in U.S. District Court for District of New Jersey.

October 6, 1981—Plaintiffs' amended complaint filed.

December 10, 1981—Answer and motion for dismissal on abstention grounds of Defendants Martin Danziger *et al.*, constituting the N.J. Casino Control Commission, filed.

December 11, 1981—Answer of Defendants G. Michael Brown, Director, N.J. Department of Law and Public Safety, Division of Gaming Enforcement, Division of Gaming Enforcement and Brendan Byrne, former Governor of N.J. filed.

February 25, 1982—Motion for dismissal on abstention grounds of Defendants Brown, Division of Gaming Enforcement and Byrne filed.

March 22, 1982—Opinion filed and order entered by District Court denying Plaintiffs' motion for preliminary injunction and Defendants' motions for dismissal on abstention grounds.

March 31, 1982—Plaintiffs' notice of appeal filed.

April 12, 1982—Notice of Cross-Appeal of Defendants Danziger *et al.* and Casino Control Commission filed.

Appendix A

April 22, 1982—Notice of Cross-Appeal of Defendants Brown, Division of Gaming Enforcement and Thomas Kean, Governor, filed.

September 28, 1982—Opinion filed and order entered by Casino Control Commission following administrative hearing, directing that certain individuals disqualified under N.J. law be removed as officers, agents or principal employees of Plaintiff union or, in the alternative, that sanctions be imposed upon Plaintiffs.

October 1, 1982—Order entered by District Court enjoining Defendants from enforcing applicable state statute and administrative decision against Plaintiffs pending appeal.

October 12, 1982—Supplemental opinion filed by Casino Control Commission.

June 6, 1983—Opinion and judgment of Court of Appeals for the Third Circuit.

June 30, 1983—Order of Court of Appeals denying Defendants' petitions for rehearing.

July 20, 1983—Notice of Appeal of Defendants Brown, Division of Gaming Enforcement and Kean filed.

August 3, 1983—Notice of Appeal of Defendants Danziger *et al.* and Casino Control Commission filed.

September 23, 1983—Appeal of Defendants Brown, Division of Gaming Enforcement and Kean docketed.

Appendix A

September 26, 1983—Appeal of Defendants Danziger *et al.* and Casino Control Commission docketed.

November 28, 1983—Order entered noting probable jurisdiction and consolidating appeals of all Defendants.

APPENDIX B

Verified Complaint

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 54, 200 N. Texas Avenue, Atlantic City, N. J. 08401

and

FRANK GERACE, PRESIDENT HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 54, 200 N. Texas Avenue, Atlantic City, N. J. 08401

vs.

MARTIN DANZINGER, ACTING CHAIRMAN, DONALD THOMAS, COMMISSIONER, MADELINE McWHINNEY, COMMISSIONER, CARL ZEITZ, COMMISSIONER, CONSTITUTING THE CASINO CONTROL COMMISSION STATE OF NEW JERSEY, Princeton Pike Office Park, Bldg. #5, CN-208, Trenton, N. J. 08625

and

G. MICHAEL BROWN, DIRECTOR DEPARTMENT OF LAW AND PUBLIC SAFETY DIVISION OF GAMING ENFORCEMENT STATE OF NEW JERSEY, CN-047, Trenton, N. J. 08625

Appendix B

and

DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, STATE OF NEW JERSEY, CN-047, Trenton, N. J. 08625

and

BRENDAN BYRNE, GOVERNOR, STATE OF NEW JERSEY, STATE HOUSE ANNEX, Trenton, N. J. 08625

Civil Action No. 81-2630

COMPLAINT

The Parties:

1. Plaintiffs in this action are Hotel and Restaurant Employees and Bartenders International Union Local 54, an unincorporated labor organization within the meaning of the National Labor Relations Act of 1947, as amended, 29 U.S.C. 141 *et seq*, with its principal office located at 200 N. Texas Avenue, Atlantic City, N.J. 08401, and Frank Gerace, President, Hotel and Restaurant Employees and Bartenders International Union Local 54, with his principal office located at the same address. Plaintiffs bring this action on their own behalf and on behalf of all officers, agents, and principal employees of said Union and on behalf of all members of said Union who are employed within the Casino and Casino Hotel Industry in Atlantic City, New Jersey.

2. Defendants, Martin Danzinger, Donald Thomas, Madeline McWhinney, and Carl Zeitz, constitutes the New Jersey Casino Control Commission, an administrative agency created by the New Jersey Casino Control Act NJSA 5:12-1 *et seq,* with its principal office located at Princeton Pike Office Park, CN-208, Trenton, New Jersey 08625.

3. Defendant, G. Michael Brown, is the Director of the New Jersey Division of Gaming Enforcement, a branch of the New Jersey Department of Law and Public Safety created by the New Jersey Casino Control Act, NJSA 5:12-1 *et seq,* with his principal office located at Department of Law and Public Safety, CN-047, Trenton, N.J. 08625.

4. Defendant, Department of Law and Public Safety, Division of Gaming Enforcement, (hereinafter called Division of Gaming Enforcement) is a branch of the New Jersey Department of Law and Public Safety created by the New Jersey Casino Control Act NJSA 5:12-1 *et seq,* with its principal office located at Department of Law and Public Safety, CN-047, Trenton, N.J. 08625.

5. Defendant, Brendan Byrne, is the Chief Executive Officer of the State of New Jersey with his office located at State House Annex, Trenton, N.J. 08625.

Jurisdiction:

6. Jurisdiction is sought pursuant to 28 U.S.C. Section 1331 vesting in this Honorable Court original jurisdiction of all civil actions arising under the Constitution, Laws,

and Treaties of the United States and 28 U.S.C. Section 1337 vesting in this Honorable Court original jurisdiction over all matters arising out of an Act of Congress regulating commerce.

7. In addition, Plaintiff seeks jurisdiction pursuant to the Declaratory Judgment Act 28 U.S.C. 2201 and 2202.

8. Jurisdiction is also sought pursuant to 28 U.S.C. Section 1343 (a) (3) vesting in this Honorable Court original jurisdiction of all actions to redress the deprivation under color of State Law of any rights secured by the Constitution and Laws of the United States.

9. Jurisdiction is also invoked pursuant to 28 U.S.C. Section 1343 (a) (4) providing for original jurisdiction in this Honorable Court to hear actions to recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights.

Background:

10. Plaintiff, Hotel and Restaurant Employees and Bartenders International Union Local 54 is the duly certified and recognized collective bargaining agent for all waiters, waitresses, bartenders, cooks, kitchen help, housekeeping, and other hotel service related employees within the Casino and Casino Hotel Industry in Atlantic City, New Jersey, all of which said employees are required to be licensed pursuant to the terms of the New Jersey Casino Control Act (NJSA 5:12-1 *et seq*).

11. Defendant, Casino Control Commission, is vested with the statutory authority and duty under the New

Jersey Casino Control Act to administer and enforce the terms of said Act and to promulgate rules and regulations thereunder.

12. Defendant, G. Michael Brown, Director of the New Jersey Division of Gaming Enforcement and Defendant, New Jersey Division of Gaming Enforcement, are vested with the statutory authority and duty under the New Jersey Casino Control Act to conduct investigations pursuant to said Act and to seek enforcement of the terms thereof.

13. Section 93(a) of said Act, NJSA 5:12-93(a) requires all labor organizations and officers and agents thereof seeking to represent employees in the Casino and Casino Hotel Industry to file Registration Statements with the Casino Control Commission as a condition precedent to acting in such a representational capacity.

14. Section 93(b) of said Act (NJSA 5:12-93(b)) bars any labor organization or Union required to be registered under Section 93(a) of said Act from receiving dues from any employee required to be licensed under said Act and employed within the Casino and Casino Hotel Industry and further from administrating any pension and welfare funds if any officer, agent, or principal employee of said labor organization or Union is disqualified pursuant to the terms of Section 86 of said Act (NJSA 5:12-86).

15. Defendants, G. Michael Brown and Division of Gaming Enforcement, within the scope of their official capacity, have filed objections to the Registrations of the Plaintiff Union and certain of its officers based on Section

86 of the New Jersey Casino Control Act and seek to have the Casino Control Commission impose the sanctions set forth in Section 93(b) of said Act.

FIRST COUNT

16. Allegations 1 through 15 are incorporated herein as fully as if set forth independently.

17. Section 93 of the New Jersey Casino Control Act attempts to regulate areas which are preempted by the National Labor Relations Act of 1947, as amended, 29 U.S.C. Section 141 *et seq* and by the Employee Retirement Income Security Act (ERISA) 29 U.S.C. Section 1001 *et seq*.

18. Accordingly, Section 93 of the New Jersey Casino Control Act (NJSA 5:12-93) is violative of the supremacy and due process clauses of the United States Constitution and the Amendments thereto.

WHEREFORE, Plaintiffs request this Honorable Court to grant judgment against the Defendants and in favor of the Plaintiffs and to award relief as follows:

(a) A Declaratory Judgment that Section 93 of the New Jersey Casino Control Act is void and invalid;

(b) To permanently enjoin the Defendants from enforcing or attempting to enforce the provisions of Section 93 of the New Jersey Casino Control Act;

(c) Reasonable attorneys fees and costs of suit; and

(d) Other relief as deemed appropriate.

SECOND COUNT

19. Allegations 1 through 15 are incorporated herein as fully as if set forth independently.

20. Section 93 of the New Jersey Casino Control Act is violative of rights of the Plaintiffs created under the National Labor Relations Act of 1947, as amended, 29 U.S.C. Section 141 *et seq,* to serve as the duly chosen collective bargaining representative of certain employees in the Casino and Casino Hotel Industry in Atlantic City, New Jersey.

21. The Defendants, acting under color of state law, seek to implement and enforce Section 93 of the New Jersey Casino Control Act and are, accordingly, in violation of 42 U.S.C. Section 1983.

22. Said violation by the Defendants is wilfull and knowing.

WHEREFORE, Plaintiffs request this Honorable Court to grant judgment against the Defendants and in favor of the Plaintiffs and to award relief as follows:

(a) Compensatory damages;

(b) Punitive damages;

(c) A Declaratory Judgment that Section 93 of the New Jersey Casino Control Act is void and invalid;

(d) To permanently enjoin the Defendants from enforcing or attempting to enforce the provisions of Section 93 of the New Jersey Casino Control Act;

(e) Reasonable attorneys fees and costs of suit; and

(f) Other relief as deemed appropriate.

THIRD COUNT

23. Allegations 1 through 15 are incorporated herein as if fully set forth independently.

24. Section 93 of the New Jersey Casino Control Act (NJSA 5:12-93) is violative of the rights created by the National Labor Relations Act of 1947 as amended, 29 U.S.C. Section 141 *et seq*, in that said New Jersey Act impermissibly interferes with the rights of those employees in the Casino and the Casino Hotel Industry who have selected the Plaintiff Union as their exclusive collective bargaining agent to make such a choice.

25. As a result of said interference by the New Jersey Act with rights created under the National Labor Relations Act, those employees in the Casino and Casino Hotel Industry who have selected the Plaintiff Union as their exclusive bargaining agent are improperly being denied the effective representation by their duly selected collective bargaining agent.

26. Allegation 21 is incorporated herein as fully as if set forth independently.

27. Said acts by the Defendants are also in violation of the due process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution of those employees in the Casino and Casino Hotel Industry who have selected the Plaintiff Union as their exclusive bargaining agent pursuant to their rights under the National Labor Relations Act as amended.

28. Allegation 22 is incorporated herein as fully as if set forth independently.

WHEREFORE, Plaintiffs request this Honorable Court to grant judgment against the Defendants and in favor of the Plaintiffs and to award relief as follows:

(a) Compensatory damages;

(b) Punitive damages;

(c) A Declaratory Judgment that Section 93 of the New Jersey Casino Control act is void and invalid;

(d) To permanently enjoin the Defendants from enforcing or attempting to enforce the provisions of Section 93 of the New Jersey Casino Control Act;

(e) Reasonable attorney's fees and costs of suit; and

(f) Other relief as the Court deemed appropriate.

FOURTH COUNT

29. Allegations 1 through 15 are incorporated herein as fully as if set forth independently.

30. Section 93 of the New Jersey Casino Control Act (NJSA 5:12-93) is violative of the equal protection clause of the United States Constitution by distinguishing between the labor organizations and employees within the Casino and Casino Hotel Industry in Atlantic City, New Jersey and all other labor organizations and Unionized employees within the State of New Jersey vis a vis the application of rights created by the National Labor Relations Act of 1947, as amended, (29 U.S.C. Section 141 *et seq*).

WHEREFORE, Plaintiffs request this Honorable Court to grant judgment against the Defendants and in favor of the Plaintiffs and to award relief as follows:

(a) A Declaratory Judgment that Section 93 of the New Jersey Casino Control Act is void and invalid;

(b) To permanently enjoin the Defendants from enforcing or attempting to enforce the provisions of Section 93 of the New Jersey Casino Control Act;

(c) Reasonable attorney's fees and costs of suit; and

(d) Other relief as deemed appropriate.

FIFTH COUNT

31. Allegations 1 through 15 are incorporated herein as fully as if set forth independently.

32. Section 93 of the New Jersey Casino Control Act (NJSA 5:12-93) is violative of rights created by the First and Fourteenth Amendments of the United States Constitution to the extent that said Act requires the registration of labor organizations seeking to represent employees within the Casino and Casino Hotel Industry.

WHEREFORE, Plaintiffs request this Honorable Court to grant judgment against the Defendants and in favor of the Plaintiffs and to award relief as follows:

(a) A Declaratory Judgment that Section 93 of the New Jersey Casino Control Act is void and invalid;

(b) To permanently enjoin the Defendants from enforcing or attempting to enforce the provisions of Section 93 of the New Jersey Casino Control Act;

(c) Reasonable attorney's fees and costs of suit; and

(d) Other relief as deemed appropriate.

SIXTH COUNT

33. Allegations 1 through 15 are incorporated herein as fully as if set forth independently.

34. Defendant, Division of Gaming Enforcement and its Director, Defendant, G. Michael Brown, have alleged that certain officers of the Plaintiff Union have violated Section 86(f) of the New Jersey Casino Control Act (NJSA 5:12-86(f)).

35. Said Section prohibits persons required to be licensed or registered under the New Jersey Casino Control Act from engaging in certain relationships.

36. Defendant, Division of Gaming Enforcement and its Director, Defendant, G. Michael Brown, seek to have Defendant, Casino Control Commission, disqualify certain officers of the Plaintiff Union pursuant to the terms

of Section 86 (f) of the New Jersey Casino Control Act and based thereon to have Defendant, Casino Control Commission, impose against the Plaintiff Union the sanctions called for by Section 93(b) of said Act.

37. Section 86(f) of the Casino Control Act is unconstitutionally overbroad and violative of rights guaranteed by the First, Fifth and Fourteenth Amendments of the United States Constitution.

WHEREFORE, Plaintiffs request this Honorable Court to grant judgment against the Defendants and in favor of the Plaintiffs and to award relief as follows:

(a) A Declaratory Judgment that Section 86(f) of the New Jersey Casino Control Act is void and invalid;

(b) To permanently enjoin the Defendants from enforcing or attempting to enforce the provisions of Section 86(f) of the New Jersey Casino Control Act;

(c) Reasonable attorney's fees and costs of suit; and

(d) Other relief as deemed appropriate.

SEVENTH COUNT

38. Allegations 1 through 15 are incorporated herein as fully as if set forth independently.

39. Allegations 34 through 36 are incorporated herein as fully as if set forth independently.

40. Section 86(f) of the New Jersey Casino Control Act (NJSA 5:12-86(f) is unconstitutionally vague and violative of rights guaranteed by the First, Fifth and Fourteenth Amendments to the United States Constitution.

WHEREFORE, Plaintiffs request this Honorable Court to grant judgment against the Defendants and in favor of the Plaintiffs and to award relief as follows:

(a) A Declaratory Judgment that Section 86(f) of the New Jersey Casino Control Act is void and invalid;

(b) To permanently enjoin the Defendants from enforcing or attempting to enforce the provisions of Section 86(f) of the New Jersey Casino Control Act;

(c) Reasonable attorney's fees and costs of suit; and

(d) Other relief as deemed appropriate.

EIGHTH COUNT

41. Allegations 1 through 15 are incorporated herein as fully as if set forth independently.

42. Allegations 34 through 36 are incorporated herein as fully as if set forth independently.

43. Section 86(f) of the New Jersey Casino Control Act (NJSA 5:12-86(f)) violates rights of the officers, agents, and principal employees of the Plaintiff Union which are guaranteed by the First, Fifth and Fourteenth Amendments to the United States Constitution.

44. The Defendants, under color of state law, seek to implement and enforce the terms of Section 86(f) of said Act and are thereby in violation of 42 U.S.C. Section 1983.

45. Said violation by the Defendants is wilfull and knowing.

WHEREFORE, Plaintiffs request this Honorable Court to grant judgment against the Defendants and in favor of the Plaintiffs and to award relief as follows:

(a) Compensatory damages;

(b) Punitive damages;

(c) A Declaratory Judgment that Section 86(f) of the New Jersey Casino Control Act is void and invalid;

(d) To permanently enjoin the Defendants from enforcing or attempting to enforce the provisions of Section 86(f) of the New Jersey Casino Control Act;

(e) Reasonable attorney's fees and costs of suit; and

(f) Other relief as deemed appropriate.

NINTH COUNT

46. Allegations 1 through 15 are incorporated herein as fully as if set forth independently.

47. The Plaintiff, Local 54, currently has collective bargaining agreements with all existing Casinos and Casino Hotels in Atlantic City and serves as the collective bargaining agent for certain classifications of employees at said Casinos and Casino Hotels for purposes of negotiating, administering, and enforcing the terms of said agreements.

48. The Plaintiff Union and said Casinos and Casino Hotels engaged in negotiations and collective bargaining in reaching said agreements pursuant to legal obligations created by Section 8(a)(5), 8(b)(3) and 8(d), of the National Labor Relations Act of 1947, as amended, 29 U.S.C. Section 158(a)(5), Section 158(b)(3) and Section 159(d).

49. Said Labor Agreements require the signatory Casinos and Casino Hotels to deduct union dues from employees represented by the Plaintiff Union and to forward said dues and certain employee benefit fund contributions to said Union for its respective Funds.

50. Both in its application and in its enforcement, Section 93 of the New Jersey Casino Control Act (NJSA 5:12-93) constitutes an impermissible impairment of the contractual obligations between the Plaintiff Union and said Casinos and Casino Hotels which have been negotiated pursuant to the requirements of the National Labor Relations Act. Said impairment is in violation of Article 1 Section 10 of the United States Constitution.

WHEREFORE, Plaintiffs request this Honorable Court to grant judgment against the Defendants and in favor of the Plaintiffs and to award relief as follows:

Appendix B

(a) A Declaratory Judgment that Section 86(f) of the New Jersey Casino Control Act is void and invalid;

(b) To permanently enjoin the Defendants from enforcing or attempting to enforce the provisions of Section 86(f) of

* * *

APPENDIX C

Amended Complaint

[TITLE OMITTED IN PRINTING.]

AMENDED COMPLAINT.

The Parties:

1. Plaintiffs in this action are Hotel and Restaurant Employees and Bartenders International Union Local 54, an unincorporated labor organization within the meaning of the National Labor Relations Act of 1947, as amended, 29 U.S.C. 141 *et seq.* with its principal office located at 200 North Texas Avenue, Atlantic City, New Jersey 08401, and Frank Gerace, President, Hotel and Restaurant Employees and Bartenders International Union Local 54, with his principal office located at the same address. Plaintiffs bring this action on their own behalf and on behalf of all officers, agents and principal employees of said Union and on behalf of all members of said Union who are employed within the Casino and Casino Hotel Industry in Atlantic City, New Jersey.

2. Defendants, Martin Danzinger, Donald Thomas, Madeline McWhinney, and Carl Zeitz, constitute the New Jersey Casino Control Commission, an administrative agency created by the New Jersey Casino Control Act NJSA 5:12-1 *et seq.* with its principal office located at Princeton Pike Office Park, CN-208, Trenton, New Jersey 08625.

3. Defendant, G. Michael Brown, is the Director of the New Jersey Division of Gaming Enforcement, a

branch of the New Jersey Department of Law and Public Safety created by the New Jersey Casino Control Act, NJSA 5:12-1 *et seq.* with his principal office located at Department of Law and Public Safety, CN-047, Trenton, New Jersey 08625.

4. Defendant, Department of Law and Public Safety, Division of Gaming Enforcement (hereinafter called Division of Gaming Enforcement) is a branch of the New Jersey Department of Law and Public Safety created by the New Jersey Casino Control Act NJSA 5:12-1 *et seq.* with its principal office located at Department of Law and Public Safety, CN-047, Trenton, New Jersey 08625.

5. Defendant, Brendan Byrne, is the Chief Executive Officer of the State of New Jersey with his office located at State House Annex, Trenton, New Jersey 08625.

Jurisdiction:

6. Jurisdiction is sought pursuant to 28 U.S.C. Section 1331 vesting in this Honorable Court original jurisdiction of all civil actions arising under the Constitution, Laws, and Treaties of the United States and 28 U.S.C. Section 1337 vesting in this Honorable Court original jurisdiction over all matters arising out of an Act of Congress regulating commerce.

7. In addition, Plaintiff seeks jurisdiction pursuant to the Declaratory Judgment Act 28 U.S.C. 2201 and 2202.

8. Jurisdiction is also sought pursuant to 28 U.S.C. Section 1343 (a) (3) vesting in this Honorable Court

original jurisdiction of all actions to redress the deprivation under color of state law of any rights secured by the Constitution and Laws of the United States.

9. Jurisidction is also invoked pursuant to 28 U.S.C. Section 1343 (a) (4) providing for original jurisdiction in this Honorable Court to hear actions to recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights.

Background:

10. Plaintiff, Hotel and Restaurant Employees and Bartenders International Union Local 54, is the duly certified and recognized collective bargaining agent for all waiters, waitresses, bartenders, cooks, kitchen help, housekeeping, and other hotel service related employees within the Casino and Casino Hotel Industry in Atlantic City, New Jersey, all of which said employees are required to be licensed pursuant to the terms of the New Jersey Casino Control Act (NJSA 5:12-1 *et seq.*).

11. Defendant, Casino Control Commission, is vested with the statutory authority and duty under the New Jersey Casino Control Act to administer and enforce the terms of said Act and to promulgate rules and regulations thereunder.

12. Defendant, G. Michael Brown, Director of the New Jersey Division of Gaming Enforcement and Defendant, New Jersey Division of Gaming Enforcement, are vested with the statutory authority and duty under the New Jersey Casino Control Act to conduct investigations

pursuant to said Act and to seek enforcement of the terms thereof.

13. Section 93(a) of said Act, NJSA 5:12-93(a) requires all labor organizations and officers and agents thereof seeking to represent employees in the Casino and Casino Hotel Industry to file Registration-Statements with the Casino Control Commission as a condition precedent to acting in such a representational capacity.

14. Section 93(b) of said Act (NJSA 5:12-93[b]) bars any labor organizaton or Union required to be registered under Section 93(a) of said Act from receiving dues from any employees required to be licensed under said Act and employed within the Casino and Casino Hotel Industry and further from administrating any pension and welfare funds if any officer, agent, or principal employee of said labor organization or Union is disqualified pursuant to the terms of Section 86 of said Act (NJSA 5:12-86).

15. Defendants, G. Michael Brown and Division of Gaming Enforcement, within the scope of their official capacity, have filed objections to the Registrations of the Plaintiff Union and certain of its officers based on Section 86 of the New Jersey Casino Control Act and seek to have the Casino Control Commission impose the sanctions set forth in Section 93(b) of said Act.

FIRST COUNT

16. Allegations 1 through 15 are incorporated herein as fully as if set forth independently.

17. Section 93 of the New Jersey Casino Control Act attempts to regulate areas which are preempted by the National Labor Relations Act of 1947, as amended, 29 U.S.C. Section 141, *et seq.* and by the Employee Retirement Income Security Act (ERISA) 29 U.S.C. Section 1001, *et seq.*

18. Accordingly, Section 93 of the New Jersey Casino Control Act (NJSA 5:12-93) is violative of the supremacy and due process clauses of the United States Constitution and the Amendments thereto.

WHEREFORE, Plaintiffs request this Honorable Court to grant judgment against the Defendants and in favor of the Plaintiffs and to award relief as follows:

(a) A Declaratory Judgment that Section 93 of the New Jersey Casino Control Act is void and invalid;

(b) To permanently enjoin the Defendants from enforcing or attempting to enforce the provisions of Section 93 of the New Jersey Casino Control Act;

(c) Reasonable attorneys fees and costs of suit; and

(d) Other relief as deemed appropriate.

SECOND COUNT

19. Allegations 1 through 15 are incorporated herein as fully as if set forth independently.

20. Section 93 of the New Jersey Casino Control Act is violative of rights of the Plaintiffs created under the National Labor Relations Act of 1947, as amended, 29

U.S.C. Section 141, *et seq.* to serve as the duly chosen collective bargaining representive of certain employees in the Casino and Casino Hotel Industry in Atlantic City, New Jersey.

21. The Defendants, acting under color of state law, seek to implement and enforce Section 93 of the New Jersey Casino Control Act and are, accordingly, in violation of 42 U.S.C., Section 1983.

22. Said violation by the Defendants is wilfull and knowing.

WHEREFORE, Plaintiffs request this Honorable Court to grant judgment against the Defendants and in favor of the Plaintiffs and to award relief as follows:

(a) Compensatory damages;

(b) Punitive damages;

(c) A Declaratory Judgment that Section 93 of the New Jersey Casino Control Act is void and invalid;

(d) To permanently enjoin the Defendants from enforcing or attempting to enforce the provisions of Section 93 of the New Jersey Casino Control Act;

(e) Reasonable attorney's fees and costs of suit; and

(f) Other relief as deemed appropriate.

Appendix C

THIRD COUNT

23. Allegations 1 through 15 are incorporated herein as fully as if set forth independently.

24. Section 93 of the New Jersey Casino Control Act and Section 86 as incorporated therein attempt to regulate areas which are preempted by the Labor Management Reporting and Disclosure Act of 1959, as amended, 29 U.S.C. Section 401 *et seq.*

25. Accordingly, Section 93 of the New Jersey Casino Control Act (NJSA 5:12-93) and Section 86 as incorporated therein (NJSA 5:12-86) are violative of the supremacy and due process clauses of the United States Constitution and the Amendments thereto.

WHEREFORE, Plaintiffs request this Honorable Court to grant judgment against the Defendants and in favor of the Plaintiffs and to award relief as follows:

(a) A Declaratory Judgment that Section 93 and Section 86 as incorporated therein of the New Jersey Casino Control Act are void and invalid;

(b) To permanently enjoin the Defendants from enforcing or attempting to enforce the provisions of Section 93 and Section 86 as incoproated therein of the New Jersey Casino Control Act;

(c) Reasonable attorney's fees and costs of suit; and

(d) Other relief as deemed appropriate.

Appendix C

FOURTH COUNT

26. Allegations 1 through 15 are incorporated herein as if fully set forth independently.

27. Section 93 of the New Jersey Casino Control Act (NJSA 5:12-93) is violative of the rights created by the National Labor Relations Act of 1947, as amended, 29 U.S.C. Section 141 *et seq.* and the Labor Management Reporting and Disclosure Act of 1959, as amended, 29 U.S.C. Section 401 *et seq.* in that said New Jersey Act impermissibly interferes wth the rights of those employees in the Casino and the Casino Hotel Industry who have selected the Plaintiff Union and its officers as their exclusive collective bargaining agents to make such a choice.

28. As a result of said interference by the New Jersey Act with rights created under the National Labor Relations Act and the Labor Management Reporting and Disclosure Act, those employees in the Casino and Casino Hotel Industry who have selected the Plaintiff Union and its officers as their exclusive bargaining agents are improperly being denied the effective representation by their duly selected collective bargaining agents.

29. Allegation 21 is incorporated herein as fully as if set forth independently.

30. Said acts by the Defendants are also in violation of the due process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution of those employees in the Casino and Casino Hotel Industry, who have selected the Plaintiff Union and its officers as

their exclusive bargaining agents pursuant to their rights under the National Labor Relations Act, as amended and the Labor Management Reporting and Disclosure Act, as amended.

31. Allegation 22 is incorporated herein as fully as if set forth independently.

WHEREFORE, Plaintiffs request this Honorable Court to grant judgment against the Defendants and in favor of the Plaintiffs and to award relief as follows:

(a) Compensatory damages;

(b) Punitive damages;

(c) A Declaratory Judgment that Section 93 of the New Jersey Casino Control Act is void and invalid;

(d) To permanently enjoin the Defendants from enforcing or attempting to enforce the provisions of Section 93 of the New Jersey Casino Control Act;

(e) Reasonable attorney's fees and costs of suit; and

(f) Other relief as the Court deemed appropriate.

FIFTH COUNT

32. Allegations 1 through 15 are incorporated herein as fully as if set forth independently.

33. Section 93 of the New Jersey Casino Control Act (NJSA 5:12-93) is violative of the equal protection clause

of the United States Constitution by distinguishing between the labor organizations and employees within the Casino and Casino Hotel Industry in Atlantic City, New Jersey and all other labor organizations and Unionized employees within the State of New Jersey, vis-a-vis the application of rights created by the National Labor Relations Act of 1947, as amended, (29 U.S.C. Section 141 *et seq*), and the Labor Management Reporting and Disclosure Act of 1959, as amended, (29 U.S.C. Section 401 *et seq*).

WHEREFORE, Plaintiffs request this Honorable Court to grant judgment against the Defendants and in favor of the Plaintiffs and to award relief as follows:

(a) A Declaratory Judgment that Section 93 of the New Jersey Casino Control Act is void and invalid;

(b) To permanently enjoin the Defendants from enforcing or attempting to enforce the provisions of Section 93 of the New Jersey Casino Control Act;

(c) Reasonable attorney's fees and costs of suit; and

(d) Other relief as deemed appropriate.

SIXTH COUNT

34. Allegations 1 through 15 are incorporated herein as fully as if set forth independently.

35. Section 93 of the New Jersey Casino Control Act (NJSA 5:12-93) is violative of rights created by the First

and Fourteenth Amendments of the United States Constitution to the extent that said Act requires the registration of labor organizations seeking to represent employees within the Casino and Casino Hotel Industry.

WHEREFORE, Plaintiffs request this Honorable Court to grant judgment against the Defendants and in favor of the Plaintiffs and to award relief as follows:

(a) A Declaratory Judgment that Section 93 of the New Jersey Casino Control Act is void and invalid;

(b) To permanently enjoin the Defendants from enforcing or attempting to enforce the provisions of Section 93 of the New Jersey Casino Control Act;

(c) Reasonable attorney's fees and costs of suit; and

(d) Other relief as deemed appropriate.

SEVENTH COUNT

36. Allegations 1 through 15 are incorporated herein as fully as if set forth independently.

37. Defendant, Division of Gaming Enforcement and its Director, Defendant, G. Michael Brown, have alleged that certain officers of the Plaintiff Union have violated Section 86(f) of the New Jersey Casino Control Act (NJSA 5:12-86(f)).

38. Said Section prohibits persons required to be licensed or registered under the New Jersey Casino Control Act from engaging in certain relationships.

39. Defendant, Division of Gaming Enforcement and its Director, Defendant, G. Michael Brown, seek to have Defendant, Casino Control Commission, disqualify certain officers of the Plaintiff Union pursuant to the terms of Section 86(f) of the New Jersey Casino Control Act and based thereon to have Defendant, Casino Control Commission, impose against the Plaintiff Union the sanctions called for by Section 93(b) of said Act.

40. Section 86(f) of the Casino Control Act is unconstitutionally overbroad and violative of rights guaranteed by the First, Fifth and Fourteenth Amendments of the United States Constitution.

WHEREFORE, Plaintiffs request this Honorable Court to grant judgment against the Defendants and in favor of the Plaintiffs and to award relief as follows:

(a) A Declaratory Judgment that Section 86(f) of the New Jersey Casino Control Act is void and invalid;

(b) To permanently enjoin the Defendants from enforcing or attempting to enforce the provisions of Section 86(f) of the New Jersey Casino Control Act;

(c) Reasonable attorney's fees and costs of suit; and

(d) Other relief as deemed appropriate.

EIGHTH COUNT

41. Allegations 1 through 15 are incorporated herein as fully as if set forth independently.

42. Allegations 37 through 39 are incorporated herein as fully as if set forth independently.

43. Section 86(f) of the New Jersey Casino Control Act (NJSA 5:12-86(f)) is unconstitutionally vague and violative of rights guaranteed by the First, Fifth and Fourteenth Amendments to the United States Constitution.

WHEREFORE, Plaintiffs request this Honorable Court to grant judgment against the Defendants and in favor of the Plaintiffs and to award relief as follows:

(a) A Declaratory Judgment that Section 86(f) of the New Jersey Casino Control Act is void and invalid;

(b) To permanently enjoin the Defendants from enforcing or attempting to enforce the provisions of Section 86(f) of the New Jersey Casino Control Act;

(c) Reasonable attorney's fees and costs of suit; and

(d) Other relief as deemed appropriate.

NINTH COUNT

44. Allegations 1 through 15 are incorporated herein as fully as if set forth independently.

45. Allegations 37 through 39 are incorporated herein as fully as if set forth independently.

46. Section 86(f) of the New Jersey Casino Control Act (NJSA 5:12-86(f)) violates rights of the officers, agents,

and principal employees of the Plaintiff Union which are guaranteed by the First, Fifth and Fourteenth Amendments to the United States Constitution.

47. The Defendants, under color of state law, seek to implement and enforce the terms of Section 86(f) of said Act and are thereby in violation of 42 U.S.C. Section 1983.

48. Said violation by the Defendants is wilfull and knowing.

WHEREFORE, Plaintiffs request this Honorable Court to grant judgment against the Defendants and in favor of the Plaintiffs and to award relief as follows:

(a) Compensatory damages;

(b) Punitive damages;

(c) A Declaratory Judgment that Section 86(f) of the New Jersey Casino Control Act is void and invalid;

(d) To permanently enjoin the Defendants from enforcing or attempting to enforce the provisions of Section 86(f) of the New Jersey Casino Control Act;

(e) Reasonable attorney's fees and costs of suit; and

(f) Other relief as deemed appropriate.

TENTH COUNT

49. Allegations 1 through 15 are incorporated herein as fully as if set forth independently.

Appendix C

50. The Plaintiff, Local 54, currently has collective bargaining agreements with all existing Casinos and Casino Hotels in Atlantic City and serves as the collective bargaining agent for certain classifications of employees at said Casinos and Casino Hotels for purposes of negotiating, administering, and enforcing the terms of said agreements.

51. The Plaintiff Union and said Casinos and Casino Hotels engaged in negotiations and collective bargaining in reaching said agreements pursuant to legal obligations created by Section 8(a)(5), 8(b)(3) and 8(d), of the National Labor Relations Act of 1947, as amended, 29 U.S.C. Section 158(a)(5), Section 159(b)(7) and Section 159(d).

52. Said Labor Agreements require the signatory Casinos and Casino Hotels to deduct Union dues from employees represented by the Plaintiff Union and to forward said dues and certain employee benefit fund contributions to said Union for its respective Funds.

53. Both in its application and in its enforcement, Section 93 of the New Jersey Casino Control Act (NJSA 5:12-93) constitutes an impermissible impairment of the contractual obligations between the Plaintiff Union and said Casinos and Casino Hotels which have been negotiated pursuant to the requirements of the National Labor Relations Act. Said impairment is in violation of Article 1, Section 10 of the United States Constitution.

WHEREFORE, Plaintiffs request this Honorable Court to grant judgment against the Defendants and in favor of the Plaintiffs and to award relief as follows:

(a) A Declaratory Judgment that Section 93 of the New Jersey Casino Control Act is void and invalid;

(b) To permanently enjoin the Defendants from enforcing or attempting to enforce the provisions of Section 93 of the New Jersey Casino Control Act;

(c) Reasonable attorney's fees and costs suit; and

(d) Other relief as deemed appropriate.

ELEVENTH COUNT

54. Allegations 1 through 15 are incorporated herein as fully as if set forth independently.

55. Section 93 of the New Jersey Casino Control Act (NJSA 5:12-93) is violative of the equal protection clause of the United States Constitution by distinguishing between labor organizations and employees in the hotel and restaurant service industries in the Casino and Casino Hotel Industry in Atlantic City, New Jersey and all other labor organizations and employees in the hotel and restaurant service industries within the State of New Jersey, vis-a-vis the application of rights created by the National Labor Relations Act of 1947, as amended, (29 U.S.C. Section 141 *et seq.*), and the Labor Management Reporting and Disclosure Act of 1959, as amended, (29 U.S.C. Section 401 *et seq.*).

WHEREFORE, Plaintiffs request this Honorable Court to grant judgment against the Defendants and in favor of the Plaintiffs and to award relief as follows:

(a) A Declaratory Judgment that Section 93 of the New Jersey Casino Control Act is void and invalid;

(b) To permanently enjoin the Defendants from enforcing or attempting to enforce the provisions of Section 93 of the New Jersey Casino Control Act;

(c) Reasonable attorney's fees and costs of suit; and

(d) Other relief as deemed appropriate.

MERANZE, KATZ, SPEAR and
WILDERMAN

BY MICHAEL N. KATZ
BERNARD N. KATZ
MICHAEL N. KATZ
Attorneys for Plaintiffs
200 North Texas Avenue
Atlantic City, New Jersey 08401
[609] 347-9363
12th Floor—Lewis Tower Building
N.E. Corner 15th & Locust Streets
Philadelphia, PA 19102
[215] KI-6-4183

DATED: 10/6/81

Commonwealth of Pennsylvania

: ss

County of Philadelphia

FRANK GERACE, being duly sworn according to law, does hereby certify that the facts set forth in the foregoing

Amended Complaint are true and correct to the best of my knowledge, information and belief.

FRANK GERACE

Sworn to and subscribed before me
this 6th day of October, 1981
Arlene R. Worley
Notary Public, Phila., Phila. Co.
My Commission Expires Jan. 31, 1984

APPENDIX D

Answer in Behalf of Defendants Danziger, *et al.*

[TITLE OMITTED IN PRINTING.]

By way of answer to the Amended Complaint Defendants Danziger, Thomas, McWhinney, Zeitz and Casino Control Commission say:

The Parties:

1. Defendants have no knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 1 of the Amended Complaint.

2. Defendants admit the allegation Paragraphs 2, 3, 4 and 5 of the Amended Complaint.

Jurisdiction:

3. Defendants deny that this action arises under the Constitution, Laws or Treaties of the United States or that there has been any threatened deprivation under color of state law of rights secured by the Constitution or Laws of the United States or that there has been any threatened deprivation of civil rights protected by any act of Congress. Defendants deny that the Declaratory Judgment Act confers jurisdiction on this Court.

Background:

4. Defendants have no knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 10 of the Amended Complaint.

5. Defendants admit the allegations of Paragraph 11, 12, 13, 14 and 15 of the Amended Complaint.

Counts I Through 11:

6. Defendants deny all the remaining allegations of the Amended Complaint.

Separate Defenses:

By way of separate defenses Defendants state:

1. The relief requested by Plaintiffs is barred because the principles of equity, comity and federalism demand that abstention is required.

2. Recovery is barred by reason of the failure of the complaint to set forth a cause of action upon which relief can be granted.

3. Defendants are immune from suit.

4. Defendants are immune from civil liablity for damages sought herein by Plaintiff's complaint.

5. Defendants are immune from suits brought under 42 *U.S.C.A.* §1983.

6. Plaintiffs have not been deprived of any right, privilege or immunity secured to them by the United States Constitution or any act of Congress.

7. Defendants acted at all times relevant in good faith and without any fraud or malice.

Appendix D

8. The Defendants did not know and were not reasonably expected to know that any actions taken by them with respect to this Plaintiff were in violation of Plaintiff's constitutional rights.

9. The complaint is frivolous, a sham and states no substantial federal question.

Reservation of Rights:

Defendants reserve the right, at or before trial, to move to dismiss the complaint, and/or for summary judgment on the grounds that the complaint fails to state a claim upon which relief can be granted and/or the Defendants are entitled to judgment as a matter of law, based upon any or all of the above defenses.

ROBERT J. GENATT
General Counsel
Attorney for Defendants

By JOHN ZIMMERMAN
Senior Assistant Counsel

APPENDIX E

Answer on Behalf of Defendants Brown, et al.

[TITLE OMITTED IN PRINTING.]

Defendants, G. Michael Brown, Department of Law and Public Safety and Brendan Byrne, in response to plaintiffs' amended complaint seeking declaratory and injunctive relief and monetary damages, say:

AS TO "THE PARTIES"

1., 2., 3., 4., 5.—Defendants admit the allegations of paragraphs 1, 2, 3, 4 and 5 of the amended complaint.

AS TO "JURISDICTION"

6. Defendants deny the allegation that this Court has jurisdiction of this complaint pursuant to either 28 U.S.C. §1331 or 28 U.S.C. §1337.

7. Defendants deny the allegation that this Court has jurisdiction of this matter pursuant to either 28 U.S.C. §2201 or 28 U.S.C. §2202.

8. Defendants deny the allegation that this Court has jurisdiction of this matter pursuant to 28 U.S.C. §1343(a)(3).

9. Defendants deny the allegation that this Court has jurisdiction of this matter pursuant to 28 U.S.C. §1343(a)(4).

AS TO "BACKGROUND"

10. Defendants admit the allegations of paragraph 10 of the amended complaint.

Appendix E

11., 12. Defendants admit the allegations of paragraphs 11 and 12 of the amended complaint.

13. Defendants deny the allegations of paragraph 13 of the amended complaint.

14. Defendants deny the allegations of paragraph 14 of the amended complaint.

15. Defendants admit the allegations of paragraph 15 of the amended complaint.

AS TO "FIRST COUNT"

16. Defendants herein incorporate by reference the responses to paragraphs 1 through 15 as previously delineated herein.

17., 18. Defendants deny the allegations of paragraphs 17 and 18 of the amended complaint.

AS TO "SECOND COUNT"

19. Defendants herein incorporate by reference the responses to paragraphs 1 through 15 as previously delineated herein.

20., 21., 22. Defendants deny the allegations of paragraphs 20, 21 and 22 of the amended complaint.

AS TO "THIRD COUNT"

23. Defendants herein incorporate by reference the responses to paragraphs 1 through 15 as previously delineated herein.

24., 25. Defendants deny the allegations of paragraphs 24 and 25 of the amended complaint.

AS TO "FOURTH COUNT"

26. Defendants herein incorporate by reference the responses to paragraphs 1 through 15 as previously delineated herein.

27., 28., 29., 30., 31. Defendants deny the allegations of paragraphs 27, 28, 29, 30 and 31 of the amended complaint.

AS TO "FIFTH COUNT"

32. Defendants herein incorporate by reference the responses to paragraphs 1 through 15 as previously delineated herein.

33. Defendants deny the allegations of paragraph 33 of the amended complaint.

AS TO "SIXTH COUNT"

34. Defendants herein incorporate by reference the responses to paragraphs 1 through 15 as previously delineated herein.

35. Defendants deny the allegations of paragraph 35 of the amended complaint.

AS TO "SEVENTH COUNT"

36. Defendants herein incorporate by reference the responses to paragraphs 1 through 15 as previously delineated herein.

37. Defendants deny the allegations of paragraph 37 of the amended complaint. Defendants have alleged that certain officers of plaintiff union are disqualified in accordance with criteria delineated in Section 86(f) of the Casino Control Act.

38. Defendants deny the allegations of paragraph 38 of the amended complaint.

39. Defendants admit the allegations of paragraph 39 of the amended complaint.

40. Defendants deny the allegations of paragraph 40 of the amended complaint.

AS TO "EIGHTH COUNT"

41. Defendants herein incorporate by reference the responses to paragraphs 1 through 15 as previously delineated herein.

42. In response to paragraph 42 of the amended complaint, defendants incorporate by reference herein the responses to paragraphs 37, 38 and 39 as previously delineated.

43. Defendants deny the allegations of paragraph 43 of the amended complaint.

AS TO "NINTH COUNT"

44. Defendants herein incorporate by reference the responses to paragraphs 1 through 15 as previously delineated herein.

Appendix E

45. In response to paragraph 45 of the amended complaint, defendants incorporate by reference herein the responses to paragraphs 37, 38 and 39 as previously delineated.

46., 47., 48. Defendants deny the allegations of paragraphs 46, 47 and 48 of the amended complaint.

AS TO "TENTH COUNT"

49. Defendants herein incorporate by reference the responses to paragraphs 1 through 15 as previously delineated herein.

50., 51. Defendants admit the allegations of paragraphs 50 and 51 of the amended complaint.

52. The allegations of paragraph 52 of the amended complaint state legal conclusions; the agreements referred to speak for themselves and the defendants need not affirm nor deny those allegations.

53. Defendants deny the allegations of paragraph 53 of the amended complaint.

AS TO "ELEVENTH COUNT"

54. Defendants herein incorporate by reference the responses to paragraphs 1 through 15 as previously delineated herein.

55. Defendants deny the allegations of paragraph 55 of amended complaint.

Appendix E

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

The complaint fails to state a claim upon which relief can be granted.

SECOND SEPARATE DEFENSE

Plaintiffs have not been deprived of any rights,

55. Defendants deny the allegations of paragraph 55 of amended complaint.

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

The complaint fails to state a claim upon which relief can be granted.

SECOND SEPARATE DEFENSE

Plaintiffs have not been deprived of any rights, privileges or immunities secured to them by the United States or New Jersey Constitutions or the laws of the United States or the State of New Jersey.

THIRD SEPARATE DEFENSE

The defendants herein are public officials of the State of New Jersey, and at all times relevant were performing acts

within the scope of their official authority, in good faith and without fraud or malice, in the exercise of their duties.

FOURTH SEPARATE DEFENSE

Defendants are immune from suit.

FIFTH SEPARATE DEFENSE

The allegations of the plaintiffs do not present a cognizable claim under the Federal Civil Rights Act.

SIXTH SEPARATE DEFENSE

The plaintiffs have failed to exhuast their administrative and State court remedies.

SEVENTH SEPARATE DEFENSE

This Court lacks jurisdiction over the subject matter of this suit.

EIGHTH SEPARATE DEFENSE

The principles of federalism, comity, equity and abstention require that the complaint be dismissed.

NINTH SEPARATE DEFENSE

Any purported controversy raised by the instant complaint is not ripe for adjudication.

Appendix E

TENTH SEPARATE DEFENSE

The challenged provisions of the Casino Control Act have been adopted by the State of New Jersey pursuant to its police powers and is a proper and appropriate exercise thereof.

ELEVENTH SEPARATE DEFENSE

The defendants are not liable for payment of damages to plaintiffs by virtue of the Eleventh Amendment to the United States Constitution.

RESERVATION OF RIGHTS

Defendants reserve the right, at or before trial, to move to dismiss the complaint, and/or for summary judgment on the grounds that the complaint fails to state a claim upon which relief can be granted and/or the Defendants are entitled to judgment as a matter of law, based upon any or all of the above defenses.

Respectfully submitted,

JAMES R. ZAZZALI
Attorney General of New Jersey

By JAMES F. FLANAGAN, III
Deputy Attorney General

APPENDIX F

Order to Show Cause and Motion for Preliminary Injunction

(TITLE OMITTED IN PRINTING.]

ORDER TO SHOW CAUSE

Upon application and for good and sufficient cause, it is hereby Ordered and Decreed that Defendants appear before this Honorable Court on the day of 1981, at o'clock in Court Room of the United States District Court for the District of New Jersey, Post Office Building, Camden, New Jersey, and show cause why the Preliminary Relief requested by the Plaintiffs herein should not be granted.

It is further Ordered and Decreed until said time that the Defendants are hereby temporarily restrained from proceeding in any manner to enforce the provisions of Section 93 of the New Jersey Casino Control Act against Plaintiff, Hotel and Restaurant Employees and Bartenders International Union Local 54, and any of its officers or agents and from requiring said Plaintiff or its officers and agents to participate in such proceedings.

_____ J.

Dated: _____

Affidavit in Support of Application for Order to Show Cause

I, FRANK GERACE, being duly sworn, do hereby certify that I am President of Hotel and Restaurant Employees

and Bartenders International Union, Local 54 and am a Plaintiff in this matter. I hereby certify that the averments below are true and correct to the best of my knowledge.

1. Plaintiffs' Verified Complaint and Motion For Preliminary Injunction are incorporated herein as if fully set forth independently.

2. Defendant, Casino Control Commission, by Order dated August 5th, 1981, has ordered that hearings commence on September 9th, 1981 to enforce the provisions of Section 93 of the New Jersey Casino Control Act against Plaintiffs, Hotel and Restaurant and Bartenders International Union Local 54 and its officers and agents.

3. Said proceedings present an immediate and irreparable injury to the rights of the Plaintiff Union and its officers and agents which are guaranteed by Section 7 of the National Labor Relations Act and the United States Constitution.

4. Said proceedings present an immediate and irreparable impairment of the Plaintiff Union's ability to fully and properly function as the duly selected collective bargaining agent for over 8,000 Casino and Casino Hotel Industry employees, and further impairs the ability of said Plaintiff to properly administer its collective bargaining agreements.

5. Absent the issuance of the attached Order to Show Cause, the Plaintiffs will improperly be forced to immediately participate in proceedings which are violative of Section 7 of the National Labor Relations Act and of the United States Constitution and which are accordingly void and invalid.

Appendix F

6. Defendants will not be harmed or prejudiced by the issuance of the requested Temporary Restraining Order but the non-issuance thereof will be to the immediate detriment and injury of the Plaintiffs and of the Plaintiffs' rights as guaranteed by Section 7 of the National Labor Relations Act and the United States Constition.

FRANK GERACE

Sworn to and Subscribed:
Before Me This Day:
of , 1981:

CERTIFICATION OF NOTICE

I hereby certify that all Defendants were given notice of the within Application for an Order to Show Cause by telephone communications with each of said Defendants' respective offices on August 14th, 1981, at which time the Defendants were informed that Plaintiffs would make the attached Application to this Court on Monday, August 17th, 1981 at 9:30 A.M. at the United States District Court for the District of New Jersey, Post Office Building, Camden, New Jersey.

MICHAEL N. KATZ
Attorney for Plaintiffs

Order for Preliminary Injunction

Upon motion made and for good cause shown, it is hereby Ordered and Decreed that the Defendants in the

above action are hereby enjoined, pending a full hearing on the merits, from proceeding in any manner to enforce the provisions of Section 93 of the New Jersey Casino Control Act against the Hotel and Restaurant Employees and Bartenders International Union Local 54 and any of its officers or agents, and from requiring said Union and its officers and agents to participate in any further enforcement proceedings.

_____J.

Notice of Motion.

To: Martin Danzinger, Acting Chairman
Donald Thomas, Commissioner
Madeline McWhinney, Commissioner
Carl Zeitz, Commissioner

You are hereby given notice that Plaintiffs in the above matter, at a date and time to be set by the Court by way of the attached Order to Show Cause, will move this Honorable Court for a Preliminary Injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure. As grounds therefor, Plaintiffs aver the following:

1. The allegations contained in the Plaintiffs' Verified Complaint are incorporated herein.

2. On July 24th, 1981, a hearing was held before the New Jersey Casino Control Commission to determine certain legal issues raised by the Plaintiffs which are set forth in the Pre-trial Memorandum issued by said Defendant, and attached hereto as Exhibit "A."

3. On August 5th, 1981 Defendant, New Jersey Casino Control Commission ruled and ordered that proceedings to enforce Section 93 of the New Jersey Casino Control Act be commenced notwithstanding the issues raised by the Plaintiffs and, further, set September 9th, 1981 as the next hearing date. See Exhibit "C."

4. Said proceedings present an immediate and irreparable injury to the Plaintiffs' rights as guaranteed by Section 7 of the National Labor Relations Act and the United States Constitution.

5. Said proceedings present an immediate and irreparable impairment of the Plaintiff Union's ability to fully and properly function as the duly selected collective bargaining agent for over 8,000 Casino and Casino Hotel Industry employees, and to properly administer its collective bargaining agreements. Said proceedings also present an immediate and irreparable impairment of Plaintiff Gerace's ability to function as a duly selected officer of the Plaintiff Union.

6. Absent the issuance of a Preliminary Injunction, the Plaintiffs will be compelled to participate in proceedings which violate Section 7 of the National Labor Relations Act and the United States Constitution and which are void and invalid.

7. All of the above described injuries constitute irreparable harm for which there is no adequate remedy at law.

8. The granting of the Plaintiffs' Motion will result only in a Stay of further State proceedings pending the resolution of the various Federal questions which have been raised. This delay is far outweighed by the immediate harm suffered by the Plaintiffs as a result of said State proceedings.

9. It is likely that the Plaintiffs will prevail on the merits of this dispute.

10. The public interest will not be harmed by the issuance of the requested Preliminary Injunction and, in fact, such Preliminary Restraints will protect the public interest and policies contained in the National Labor Relations Act and the United States Constitution.

WHEREFORE, Plaintiffs request this Honorable Court to issue a Preliminary Injunction enjoining the Defendant from proceeding in any manner to enforce the provisions of Section 93 of the New Jersey Casino Control Act against the Plaintiff Union and its officers and agents.

MERANZE, KATZ, SPEAR AND WILDERMAN

By:_____

BERNARD N. KATZ
MICHAEL N. KATZ
Attorneys for Plaintiffs

(Jurat and certification of service omitted in printing.)

APPENDIX G

Motions for Dismissal and Judgment on the Pleadings

[TITLE OMITTED IN PRINTING]

Notice of Motion to Dismiss

PLEASE TAKE NOTICE that on January 15, 1982, at 10 a.m. or as soon thereafter as counsel can be heard, defendants Danziger, Thomas, McWhinney, Zeitz and Casino Control Commission, in accord with Rule 12 of the Federal Rules of Civil Procedure, will move to dismiss counts two, four and nine of the amended complaint on the ground that those counts fail to set forth a cause of action upon which relief can be granted because defendants are absolutely immune from suit for money damages under 42 *U.S.C.A.* §1983, and will further move to dismiss the entire amended complaint on the ground of abstention.

Counsel will rely on the brief filed herewith and, with respect to abstention, on the brief previously filed in opposition to the request for a preliminary injunction.

NEW JERSEY CASINO CONTROL
COMMISSION
Princeton Pike Office Park
Building No. 5
CN-208
Trenton, N.J. 08625

By JOHN ZIMMERMAN
Senior Assistant Counsel

Appendix G

Notice of Motion for Judgment on the Pleadings

Please take notice that the defendants, Department of Law and Public Safety, Division of Gaming Enforcement, Director G. Michael Brown, and Former Governor Brendan Byrne move the Court to dismiss the Amended Complaint on the grounds of abstention, or, in the alternative, to dismiss counts two, four and nine of the Amended Complaint on the grounds of immunity. The undersigned will bring the above motion on for hearing before the Court at the U.S. Courthouse and Post Office, Market Street, Camden New Jersey on the 19th day of March 1982 at 10 a.m. or as soon thereafter as counsel may be heard.

Respectfully submitted,

G. MICHAEL BROWN
Director
Division of Gaming Enforcement

By Stephen D. Schrier
Deputy Attorney General

APPENDIX H

Orders of the United States Supreme Court Noting Probable Jurisdiction

SUPREME COURT OF THE UNITED STATES

No. 83-498

G. MICHAEL BROWN, etc., *et al.*,

Appellants,

v.

HOTEL and RESTAURANT EMPLOYEES and BARTENDERS INTERNATIONAL UNION LOCAL 54, *et al.*

APPEAL from the United States Court of Appeals for the Third Circuit.

The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted. This case is consolidated with case No. 83-573, *Martin Danziger, etc., et al. v. Hotel and Restaurant Employees and Bartenders International Union Local 54, et al.*, and a total of one hour is allotted for oral argument.

November 28, 1983

Received
Dec 21 1983
New Jersey
Casino Control Commission

Appendix H

SUPREME COURT OF THE UNITED STATES

No. 83-573

MARTIN DANZIGER, etc., *et al.*,

Appellants,

v.

HOTEL and RESTAURANT EMPLOYEES and BARTENDERS INTERNATIONAL UNION LOCAL 54, *et al.*

APPEAL from the United States Court of Appeals for the Third Circuit.

The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted. This case is consolidated with case No. 83-498, *G. Michael Brown, etc., et al. v. Hotel and Restaurant Employees and Bartenders International Union Local 54, et al.*, and a total of one hour is allotted for argument.

November 28, 1983

Received
Dec 21 1983
New Jersey
Casino Control Commission

APPENDIX I

N.J. Stat. Ann. §5:12-78 (West Supp. 1983-1984).

N.J. Stat. Ann. §5:12-78 (West Supp. 1983-1984), entitled "Cooperation by licensees, registrants or applicants," provides:

Each licensee or registrant, or applicant for a license or registration under this act shall cooperate with the division in the performance of its duties.

APPENDIX J

N.J. Stat. Ann. §5:12-80 (West Supp. 1983-1984).

N.Y. Stat. Ann. §5:12-80 (West Supp. 1983-1984) "Licensing—General provisions," provides:

a. It shall be the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications, and for a casino license the qualifications of each person who is required to be qualified under this act as well as the qualifications of the facility in which the casino is to be located.

b. Any applicant, licensee, registrant, or any other person who must be qualified pursuant to this act shall provide all information required by this act and satisfy all requests for information pertaining to qualification and in the form specified by the commission. All applicants, registrants, and licensees shall waive liability as to the State of New Jersey, and its instrumentalities and agents, for any damages resulting from any disclosure or publication in any manner, other than a willfully unlawful disclosure or publication of any material or information acquired during inquiries, investigations or hearings.

c. All applicants, licensees, registrants, intermediary companies, and holding companies shall consent to inspections, searches and seizures and the supplying of handwriting exemplars as authorized by this act and regulations promulgated hereunder.

d. All applicants, licensees, registrants, and any other person who shall be qualified pursuant to this act shall have the continuing duty to provide any assistance or information required by the commission or division, and to

cooperate in any inquiry or investigation conducted by the division and any inquiry, investigation, or hearing conducted by the commission. If, upon issuance of a formal request to answer or produce information, evidence or testimony, any applicant, licensee, registrant, or any other person who shall be qualified pursuant to this act refuses to comply, the application, license, registration or qualification of such person may be denied or revoked by the commission.

e. No applicant or licensee shall give or provide, offer to give or provide, directly or indirectly, any compensation or reward or any percentage or share of the money or property played or received through gaming activities, except as authorized by this act, in consideration for obtaining any license, authorization, permission or privilege to participate in any way in gaming operations.

f. Each applicant or person who must be qualified under this act shall be photographed and fingerprinted for identification and investigation purposes in accordance with procedures established by the commission.

g. All licensees, all registrants, all persons required to be qualified under this act, and all persons employed by a casino service industry licensed pursuant to this act, shall have a duty to inform the commission or division of any action which they believe would constitute a violation of this act. No person who so informs the commission or the division shall be discriminated against by an applicant, licensee or registrant because of the supplying of such information.

APPENDIX K

N.J. Stat. Ann. §5:12-107(c) (West Supp. 1983-1984).

N.J. Stat. Ann. §5:12-107(c) (West Supp. 1983-1984), entitled "Punishment of contempts," provides:

c. If any person in proceedings before the commission disobeys or resists any lawful order, refuses to respond to a subpoena, refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, or is guilty of misconduct at the hearing or so near the place thereof as to obstruct the proceeding, the person may be punished for contempt in accordance with the Rules of Court if the commission certifies the facts underlying the contumacious behavior to the Superior Court. Thereafter, the courts shall have jurisdiction in the matter, and the same proceeding shall be had, the same penalties may be imposed, and the person charged may purge himself of the contempt in the same way as in the case of a person who has committed contempt in the trial of a civil action before the Superior Court.

APPENDIX L

N.J. Stat. Ann. §5:12-117 (West Supp. 1983-1984).

N.J. Stat. Ann. §5:12-117 (West Supp. 1983-1984), entitled "Employment without license, registration, or work permit; penalty," provides:

a. Any person who, without obtaining the requisite license or registration as provided in this act, works or is employed in a position whose duties would require licensing or registration under the provisions of this act is guilty of a misdemeanor and subject to not more than 3 years imprisonment or a fine of $10,000.00 or both, and in the case of a person other than a natural person, to a fine of not more than $50,000.00.

b. Any person who employs or continues to employ an individual not duly licensed or registered under the provisions of this act in a position whose duties require a license or registration under the provisions of this act is guilty of a misdemeanor and subject to not more than 3 years imprisonment or a fine of $10,000.00 or both, and in the case of a person other than a natural person, to a fine of not more than $50,000.00.

c. Any person who employs an individual without obtaining a work permit or does not return such permit as required by this act, is guilty of a misdemeanor and subject to a fine of not more than $10,000.00, and in the case of a person other than a natural person, to a fine of not more than $50,000.00.

d. Any person violating the provisions of subjection 101 e. of this act' shall be guilty of a misdemeanor, and

shall be subject to imprisonment for not more than 7 years or a fine of not more than $25,000.00, or both. Any licensee permitting or allowing such a violation shall also be punishable under this subsection, in addition to any other sanctions the commission may impose.